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INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

Dated as of June 15, 1979

Between each of

PULLMAN INCORPORATED (Pullman Standard Division)  
and ORTNER FREIGHT CAR COMPANY,

and

UNITED STATES TRUST COMPANY OF NEW YORK,  
as Agent

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## AGREEMENT AND ASSIGNMENT

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### TABLE OF CONTENTS

	<u>Page</u>
PARTIES .....	1
PREAMBLES .....	1
SECTION 1. Assignments by Builder to Assignee; No Recourse .....	1
SECTION 2. Builders Agree to Construct Equipment and Warrant Title Thereto; No Delivery Until Filing .....	2
SECTION 3. Indemnification of Assignee; Patent Indemnification .....	3
SECTION 4. Conditions to Obligation of Assignee to Pay Builder .....	4
SECTION 5. Further Assignments by Assignee .....	8
SECTION 6. Representation and Warranty and Agreement of Builder .....	8
SECTION 7. Law Governing .....	9
SECTION 8. Notice of Assignment to Railroad .....	9
SECTION 9. Counterparts .....	9
TESTIMONIUM .....	9
SIGNATURES .....	9
ACKNOWLEDGMENTS	
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT	

AGREEMENT AND ASSIGNMENT, dated as of June 15, 1979, between UNITED STATES TRUST COMPANY OF NEW YORK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent so acting being hereinafter called the "Assignee"), and each of the other corporations named at the end hereof (each such corporation being hereinafter called the "Builder" and together the "Builders").

WHEREAS the Builders and Southern Railway Company (the "Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders severally, and the purchase by the Railroad of the railroad rolling stock equipment described in Schedule B to the CSA (the "Equipment" and the Equipment sold by each Builder being hereinafter called "its Equipment" or "such Builder's Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: That, in consideration of the sum of One Dollar (\$1) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereby agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all its right, title and interest in and to each unit of its Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to such Builder of the amount required to be paid under Section 4 hereof (other than any payment pursuant to any supplemental invoice);

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or

owing by the Railroad to such Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of its Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to such Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of each Builder to the Railroad with respect to its Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it will construct and deliver its Equipment to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to

the Assignee and the Railroad that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the CSA and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until any necessary filings and recordations referred to in Article 19 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to its Equipment or the delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Article 14 of the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment or a supplemental invoice, shall pay to each Builder whose Equipment shall be included in such group and to each Builder who shall submit a supplemental invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments together with such funds as then due the Builder have been provided by the Railroad pursuant to subparagraph (a) of said Article 4, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least two business days (as defined in said Article 4) prior to such Closing Date, the following documents (executed counterparts of which shall be furnished to the Railroad), in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee security title to the units

of its Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the CSA, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the units of such Builder's Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and such Builder and is a legal, valid and binding instrument enforceable against the Railroad and such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by such Builder by this Assignment, (v) title to the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the CSA, was free from all claims, liens, security interests and other encumbrances (other than those created by the CSA), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement

by the Railroad or for the valid execution and delivery of the CSA or this Assignment by the parties thereto, (vii) the CSA and this Assignment have been filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 and no other filing or recordation (except as therein specified) is necessary for the protection of the rights of the Assignee in any State of the United States or in the District of Columbia, and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to any such Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors.

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement, the CSA and this Assignment by all parties thereto other than the Railroad) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for such Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such



Builder and enforceable against such Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal, valid and binding obligation of such Builder;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that no event of default, or event which with the lapse of time or demand, or both, as provided for in the CSA could constitute an event of default, shall have occurred and is then continuing; and

(h) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to this first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

provided, however, that with respect to Equipment for which a supplemental invoice is submitted by a Builder as permitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c), (g) and (h) of this paragraph.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely, as to authorization, execution and delivery by each Builder of the documents executed by such Builder and as to title to the Equipment at the time of delivery thereof under the CSA, on the opinion of counsel for such Builder; and, in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States of America on the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the Assignee's having on deposit, pursuant

to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time or demand, or both, as provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make any such payment for any Group of the Equipment (other than payment in respect of a supplemental invoice), the Assignee shall reassign to such Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of such Builder's Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment and upon the giving of notice required in Article 15 of the CSA, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as such Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. Each Builder shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

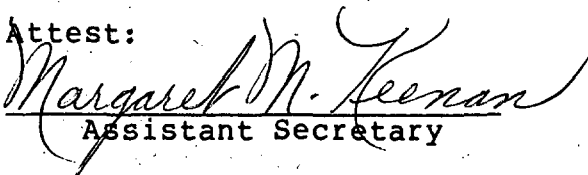
PULLMAN INCORPORATED, (Pullman  
Standard Division),

by

  
Vice President

[Corporate Seal]

Attest:

  
Assistant Secretary

ORTNER FREIGHT CAR COMPANY,

by

*J. H. Ostrum*  
Vice President

[Corporate Seal]

Attest:

*F. Lumber*  
Assistant Secretary

UNITED STATES TRUST COMPANY  
OF NEW YORK, as Agent,

by

*J. G. Givens*  
~~Asst.~~ Vice President

[Corporate Seal]

Attest:

*Stephen J. Kalra*  
Assistant Secretary

#### ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SOUTHERN RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of June 15, 1979.

SOUTHERN RAILWAY COMPANY,

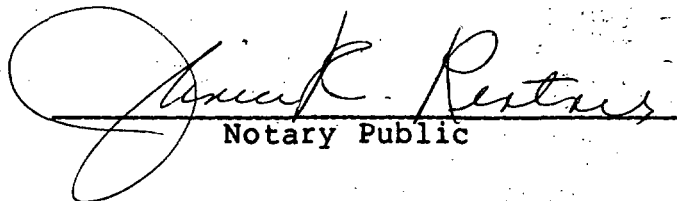
by

*K. A. Fiecher*  
Senior Vice President

*2/20*

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this 11<sup>th</sup> day of July 1979, before me personally appeared E. J. Chrusick to me personally known, who, being by me duly sworn, says that he is Vice President of PULLMAN INCORPORATED (Pullman Standard Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

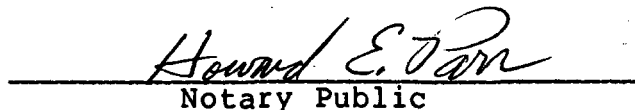
  
Notary Public

[NOTARIAL SEAL]

My Comission Expires 8-7-79

STATE OF OHIO, )  
 ) ss.:  
COUNTY OF HAMILTON, )

On this 13<sup>th</sup> day of July 1979, before me personally appeared J. L. ORTNER JR. to me personally known, who, being by me duly sworn, says that he is Vice President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
Notary Public

[NOTARIAL SEAL]

My Commission expires

HOWARD E. PARR  
Notary Public, State of Ohio  
My Commission Expires August 20, 1983

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this 10<sup>th</sup> day of July 1979, before me personally appeared G. BOSWELL, to me personally known, who, being by me duly sworn, says that *Asst.* ~~he is a~~ Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Trustees and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Federico C. Santos

Notary Public

FEDERICO C. SANTOS  
Notary Public, State of New York  
No. 41-4691650  
Qualified in Queens County  
Commission Expires March 30, 1981

[NOTARIAL SEAL]

My Commission Expires

## CERTIFICATE OF INTEREST

UNITED STATES TRUST COMPANY OF NEW YORK (the  
"Agent") hereby acknowledges receipt from  
(the "Investor") of

Dollars (\$ ),  
such sum having been paid by the Investor under and pursuant  
to the terms and conditions of a Finance Agreement dated as  
of June 15, 1979 (the "Finance Agreement"), among the Agent,  
SOUTHERN RAILWAY COMPANY (the "Railroad"), the Investor and  
the other parties named in Schedule A to the Finance Agreement.  
By reason of such payment the Investor has an interest in a  
principal amount equal to such sum (i) in the Conditional  
Sale Agreement dated as of June 15, 1979 (the "CSA"), among  
Pullman Incorporated (Pullman Standard Division), and Ortner  
Freight Car Company (the "Builders") and the Railroad, (ii)  
in the Agreement and Assignment dated as of June 15, 1979,  
between the Builder and the Agent, (iii) in the right, title  
and interest of the Agent in and to the equipment covered by  
the CSA and (iv) in and to all cash and other property from  
time to time held by the Agent under the Finance Agreement,  
except to the extent that installments of such principal  
amount shall have been paid.

Under the terms of the CSA, subject to the rights  
of prepayment contained therein in the event of a Casualty  
Occurrence (as defined therein), (i) such principal amount  
is repayable in 15 equal consecutive annual installments on  
August 1 in each year commencing August 1, 1980, to and  
including August 1, 1994, (ii) such principal amount bears  
interest, payable semiannually on February 1 and August 1 in  
each year, commencing February 1, 1980, on the unpaid portion  
thereof from time to time outstanding from the date of this  
certificate until the same shall have become due and payable,  
at the rate of 9.875% per annum and (iii) all such principal  
and interest remaining unpaid after the same shall have  
become due and payable bears interest, to the extent legally  
enforceable, at the rate of 10.875% per annum. All payments  
received by the Agent in accordance with the terms of the  
Finance Agreement and the CSA shall be disbursed by the Agent  
in accordance with the terms and conditions of the Finance  
Agreement.

The Interests of the Investors referred to in

this Certificate of Interest may not be transferred except in the manner provided in Paragraph 8 of the Finance Agreement and subject to the terms, conditions and limitations provided therein.

Dated

UNITED STATES TRUST COMPANY  
OF NEW YORK, Agent under the  
Finance Agreement,

by

\_\_\_\_\_  
Authorized Officer

INQUIRY SHOULD BE MADE OF THE AGENT IF CERTIFICATION AS TO  
BALANCE DUE HEREUNDER IS REQUIRED.